IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 12271 OF 2004

Date of Decision: 21.9.2006

Ms. Rekha ..Petitioner

Versus

State of Punjab and others. ..Respondents

CORAM : HON'BLE MR. JUSTICE J.S. KHEHAR
HON'BLE MR. JUSTICE S.D. ANAND

Present : Mr. R.K. Sharma, Advocate,
for the petitioner.

Mr. Ashok Aggarwal, Additional Advocate General, Punjab,
for respondent Nos. 1 to 4.

Ms. Jagdeep Bains, Advocate,
for respondent No.5.

J.S. Khehar, J. (Oral)

Through the instant writ petition, the petitioner claims a writ in the nature of mandamus requiring respondent No.5 to pay the retiral benefits including Gratuity, Leave Encashment, etc. to the petitioner on account of the service rendered by her with the Co-operative House Building Society Ltd., Mandi Gobindgarh (Respondent No.5).

On the merits of the claim raised by the petitioner, it is asserted by the learned counsel for respondent No.5, that the recoveries to be made by the petitioner are far in excess of the dues payable to the petitioner on account of her retiral benefits in the nature of gratuity, leave encashment etc. That apart, learned counsel for respondent No.5 has vehemently contested the jurisdiction of this Court under Article 226 of the Constitution of India so as to entertain the prayer made by the petitioner for implementation

thereof as against respondent No.5. It is in this behalf vehemently submitted by the learned counsel for the respondents that respondent No.5 i.e. the Co-operative House Building Society Ltd., Mandi Gobindgarh is neither State within the meaning of Article 12 of the Constitution of India nor does it have traits of State as expressed in the definition of the aforesaid term under Article 12 of the Constitution of India. In this behalf, learned counsel for respondent No.5 has invited our attention to the following preliminary objections raised in the written statement filed on behalf of respondent No.5:-

> "1. That the petitioner has not availed the alternative remedy by filing a Revision Petition under Section 69 of the Punjab Cooperative Societies Act, 1961 before respondent No.2, hence the present petition deserves to be dismissed on this ground itself that the alternative before respondent No.2 in exercise of the revisional jurisdiction to adjudicate the present matter in dispute is available.
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> 2. That the present writ petition deserves to be dismissed that another ground also as the Mandi Gobindgarh Cooperative House Building Society Ltd. (hereinafter referred to as the society) though is registered under the Punjab Cooperative Societies Act, 1961, it is not discharging any functions of the State and yet there are no statutory service rules framed to deal with the conditions of service of its employees. No share capital has been subscribed by the government, hence for the present matter in dispute no statutory duty is cast upon the society which being a private body does not fall within the definition of

state under Article 12 of the Constitution of India hence a writ does not lie against respondent No.5 society and the writ petition filed by the petitioner is not maintainable on this ground also."

Having examined the issue in hand, we called upon the learned counsel for the petitioner to invite our attention to the pleadings in this case and/or any other relevant material to establish that the Co-operative House Building Society Ltd., Mandi Gobindgarh (Respondent No.5) can be treated as state within the meaning under Article 12 of the Constitution of India. Learned counsel for the petitioner could not invite our attention to any such material. In view of the above, we are satisfied that the instant writ petition is clearly not maintainable under Article 226 of the Constitution of India.

In view of the above, we hereby dismiss this petition as not maintainable. It will, however, be open to the petitioner to pursue her claim through some other alternative remedy available to her.

(J.S. Khehar)
Judge

September 21, 2006 (S.D. Anand)
vkd Judge